

CAREAGE

July 11, 2007

Mary Selecky, Secretary
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RE: Proposed Rule Change to Certificate of Need Definition of Established Bed Ratio for Nursing Homes

Dear Secretary Selecky:

The Department of Health (DOH) has proposed a CR-101 dated 3/15/07 to change the Certificate of Need (CN) definition of established bed ratio in WAC 246-310-010 (9) as follows:

- Current – 40 beds per 1,000 persons age 65 and older
- Proposed – 40 beds per 1,000 persons age 70 or older

As you may know, Careage is in the business of developing, constructing and operating skilled nursing facilities so we are squarely on both sides of this particular issue. However, over our 45+ years in business we have never been afraid of competition and are keenly interested in the reputation of our industry which we think is best served in a competitive environment with quality care delivered in modern state-of-the-art skilled nursing facilities. Therefore, we come down squarely on the side of the consumer, and therefore, we strongly oppose this change.

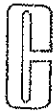
We recognize that health care policy in the State of Washington supports CN, which by its very definition does restrict competition. However, the proposed change goes well beyond placing limits on competition by essentially creating a moratorium for many years to come, which we do not believe is in the best interests of the citizens of this state.

We are opposed to this change and following are the reasons why:

BACKGROUND

The impetus for this change appears to be a letter from the Department of Social and Health Services dated January 5, 2007 that was also signed by Washington Health Care Association, Washington Association of Housing and Services for the Aging, and Providence Health System. This letter gave some background for the requested change based on the following assumptions:

1. The 40 beds per 1,000 age 65 or older ratio hasn't been changed since July 1999 when it was established by the legislature.
2. The section of RCW 70.38 defining the "established ratio" expired in 2004. The DOH continued the same ratio by adoption of the standard into rule.
3. The average occupancy for nursing homes was 86.5% based on 2005 cost reports.



4. The average age for all nursing home residents is approximately 80 and changing the established ratio based on the population age 70 or older would more accurately reflect the population served by nursing homes.
5. Regarding long term care, the legislature has expressed its intent to -
 - a. Promote individual choice, dignity
 - b. Meet the needs of consumers
 - c. Be responsive to individual needs
 - d. Enhance the quality of life of each resident
 - e. Expand community-based services

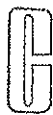
The actual number of currently licensed beds is 25,436 and the total population age 65+ is 745,711 per the DOH Nursing Home Bed Projections dated 1/24/07. The total population age 70+ is only 525,773 per The State of Washington Office of Financial Management (OFM) Forecast of State Population by Age & Sex 2000 – 2030 from the November 2006 Forecast Updated 10/30/06. The impact of making this change will be as follows:

<u>CURRENT DEFINITION</u>	<u>2007</u>
Population Age 65+	<u>745,711</u>
Current Licensed Beds	25,436
Bed Need at 40 beds /1000 age 65+	<u>29,828</u>
Under-Bedded	<u>(4,392)</u>
 <u>PROPOSED DEFINITION</u>	 <u>2007</u>
Population Age 70+	<u>525,773</u>
Current Licensed Beds	25,436
Bed Need at 40 beds /1000 age 70+	<u>21,031</u>
Over-Bedded	<u>4,405</u>

With a stroke of the pen, the proposed changes would move the state from being under-bedded by 4,392 beds into being over-bedded by 4,405 beds, a substantial swing of 8,797 beds. Again based on the OFM projections of population growth, the age 70+ definition effectively means the state will not need any new beds until 2015.

COMMENTS / QUESTIONS

1. The above-noted January 5th letter indicates that the average occupancy for nursing homes was 86.5% in 2005.
 - a. Is this occupancy % low? Based on what? How does the changing nature of services delivered in today's nursing home setting affect need? Are nursing homes effectively full at a ratio that is less than 86%. Do factors such as sex, diagnosis, bed holds, and short term stays affect occupancy and the effective ability of homes to accept residents?
 - b. There is no existing WAC that indicates what nursing home occupancy is considered full.
 - c. On June 7th at the DOH meeting on this CR-101, a WHCA representative and a signer to the January 5th letter indicated above, stated that nursing homes are functionally full at 85% occupancy.



2. Since this change will so dramatically affect the number of nursing home beds in the State of Washington, where is the empirical research that shows what the true nursing home bed need is in the State? Where is the research that shows how nursing homes beds are currently used? The letter makes the assumption that nursing homes are used for LTC needs only. Use of nursing home beds as sub-acute beds is very common in some communities, and is essential to the efficient operation of hospitals, and the delivery of needed rehabilitative care services to consumers particularly when other alternatives are not workable or available. Without such evidence-based research, doesn't this change appear to be arbitrary and capricious in nature?
3. Since two nursing home associations and one nursing home operator signed the January 5th letter, it appears that the nursing home industry is behind this proposal. But their rationale seems transparent. What business would not support a government mandated measure that consolidates their position and effectively reduces or eliminates future competition from newer and better facilities? This is certainly self serving and should be dismissed outright as a reason to adopt this proposed change. Again, a change of this significance should only be made after a careful evidence-based review.
4. The Certificate of Need process already operates to significantly restrict competition, thereby protecting the investment of existing providers. This change, however, goes well beyond the original intent of CN and in essence creates a monopoly as there will be no new nursing homes built in Washington State for many years.

Government is historically against monopolies and for competition - for the betterment of consumers. How then does this proposed change help consumers? How does this serve individual resident choice?
5. Many existing nursing homes are 30 - 40 years old and have multi-resident rooms (3 & 4 bed wards). We believe this current situation does nothing to: a) promote individual choice & dignity; b) meet the needs of consumers; or c) promote quality of life of each resident - all stated goals of the legislature. And this proposed change will only act to continue this current situation as no new nursing homes will be built in Washington State for many years. Shouldn't residents have a choice of a little more privacy and thus quality of life?
6. By making the proposed change, there will be no new nursing homes built in Washington State for many years. Many existing nursing homes are in poor physical condition, and may not be in compliance with current building and life safety codes. Current rules regarding remodeling or replacement facilities also do not incent current providers to modernize their existing facilities. We believe this current situation does nothing to: a) promote individual choice & dignity; b) meet the needs of consumers; or c) promote quality of life of each resident - all stated goals of the legislature. Shouldn't residents have a choice of new, modern, state-of-the-art facilities?
7. The state also has a goal of promoting community-based nursing home services. In many counties today these services are only provided many miles away from some population bases - essentially in different communities. How then does a moratorium on any new nursing home beds for many years help this current situation?

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In summary, Careage believes that this rule change, if not undertaken thoughtfully and based on sound data and analysis, will hurt consumers in the state of Washington by eliminating competition among providers and severely limiting choice and the opportunity for dignity and quality of life for residents and their families. We also believe old decrepit facilities hurt the reputation of the nursing home industry as a whole, and that no rule should be adopted that makes it more difficult for state-of-the-art facilities to be built based on reasonable need projections. Please do not move forward with this proposed rule as currently construed. Rather, if the Department intends to move forward, it must first undertake a data collection and analysis process to determine an appropriate ratio. Further, the Department should also file a CR-101 to open the remainder of the nursing home Certificate of Need related WACs to ensure that they too are modified to reflect changing circumstances.

Sincerely,
Careage



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